

## **CHAPTER 14-09 PARENT AND CHILD**

**14-09-01. Legitimacy of children born in wedlock.** Repealed by S.L. 2005, ch. 135, § 11.

**14-09-02. Children born after dissolution of marriage or before wedlock - Legitimacy.** Repealed by S.L. 2005, ch. 135, § 11.

**14-09-03. Who may dispute presumption of legitimacy.** Repealed by S.L. 2005, ch. 135, § 11.

**14-09-04. Custody of legitimate child.** The father and mother of a legitimate unmarried minor child are entitled equally to its custody, services, and earnings, and neither can transfer such custody, services, and earnings to any other person, without the written consent of the other, except in case of death, desertion, or abandonment.

**14-09-05. Custody of illegitimate child.** When maternity and paternity of an illegitimate child are positively established, the custody rights must be equal as between mother and father and must serve the best interests of the child. The custodial parent is entitled to the child's services and earnings.

**14-09-05.1. Grandparental rights of visitation to unmarried minors - Mediation or arbitration.** The grandparents and great-grandparents of an unmarried minor may be granted reasonable visitation rights to the minor by the district court upon a finding that visitation would be in the best interests of the minor and would not interfere with the parent-child relationship. The court shall consider the amount of personal contact that has occurred between the grandparents or great-grandparents and the minor and the minor's parents. This section does not apply to agency adoptions or when the minor has been adopted by a person other than a stepparent or grandparent. Any visitation rights granted under this section before the adoption of the minor may be terminated upon the adoption if termination of the rights is in the best interest of the minor. An application for visitation rights under this section may be considered by the district court in conjunction with a divorce proceeding involving the parent of the minor child. If any district court of this state retains jurisdiction over the custodial placement of the minor child or children by virtue of any prior proceedings, the rights conferred by this section may be enforced by the grandparents or the great-grandparents through motion under the prior proceeding. If no district court otherwise has jurisdiction, a proceeding to enforce grandparental rights may be brought against the custodial parent as a civil action and venued in the county of residence of the minor child. The district court may require mediation of the matter under chapter 14-09.1. If mediation fails and if the mediator agrees, the court may order the dispute arbitrated by the person who attempted mediation. Joinder of grandparents or of great-grandparents awarded visitation rights under this section must occur in any proceeding to terminate parental rights.

**14-09-06. Priority of custody of father and mother.** The husband and father and wife and mother have equal rights with regard to the care, custody, education, and control of the children of the marriage, while such husband and wife live separate and apart from each other, and when they so live in a state of separation without being divorced, the district court or judge thereof, upon application of either, may grant a writ of habeas corpus to inquire into the custody of any minor unmarried child of the marriage, and may award the custody of such child to either for such time and under such regulations as the case may require. The decision of the court or judge must be guided by the rules provided by law for awarding the custody of a minor or the appointment of a general guardian.

**14-09-06.1. Awarding custody - Best interests and welfare of child.** An order for custody of an unmarried minor child entered pursuant to this chapter must award the custody of the child to a person, agency, organization, or institution as will, in the opinion of the judge, promote the best interests and welfare of the child. Between the mother and father, whether

natural or adoptive, there is no presumption as to who will better promote the best interests and welfare of the child.

**14-09-06.2. Best interests and welfare of child - Court consideration - Factors.**

1. For the purpose of custody, the best interests and welfare of the child is determined by the court's consideration and evaluation of all factors affecting the best interests and welfare of the child. These factors include all of the following when applicable:
  - a. The love, affection, and other emotional ties existing between the parents and child.
  - b. The capacity and disposition of the parents to give the child love, affection, and guidance and to continue the education of the child.
  - c. The disposition of the parents to provide the child with food, clothing, medical care, or other remedial care recognized and permitted under the laws of this state in lieu of medical care, and other material needs.
  - d. The length of time the child has lived in a stable satisfactory environment and the desirability of maintaining continuity.
  - e. The permanence, as a family unit, of the existing or proposed custodial home.
  - f. The moral fitness of the parents.
  - g. The mental and physical health of the parents.
  - h. The home, school, and community record of the child.
  - i. The reasonable preference of the child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference.
  - j. Evidence of domestic violence. In awarding custody or granting rights of visitation, the court shall consider evidence of domestic violence. If the court finds credible evidence that domestic violence has occurred, and there exists one incident of domestic violence which resulted in serious bodily injury or involved the use of a dangerous weapon or there exists a pattern of domestic violence within a reasonable time proximate to the proceeding, this combination creates a rebuttable presumption that a parent who has perpetrated domestic violence may not be awarded sole or joint custody of a child. This presumption may be overcome only by clear and convincing evidence that the best interests of the child require that parent's participation as a custodial parent. The court shall cite specific findings of fact to show that the custody or visitation arrangement best protects the child and the parent or other family or household member who is the victim of domestic violence. If necessary to protect the welfare of the child, custody may be awarded to a suitable third person, provided that the person would not allow access to a violent parent except as ordered by the court. If the court awards custody to a third person, the court shall give priority to the child's nearest suitable adult relative. The fact that the abused parent suffers from the effects of the abuse may not be grounds for denying that parent custody. As used in this subdivision, "domestic violence" means domestic violence as defined in section 14-07.1-01. A court may consider, but is not bound by, a finding of domestic violence in another proceeding under chapter 14-07.1.
  - k. The interaction and interrelationship, or the potential for interaction and interrelationship, of the child with any person who resides in, is present, or frequents the household of a parent and who may significantly affect the child's

best interests. The court shall consider that person's history of inflicting, or tendency to inflict, physical harm, bodily injury, assault, or the fear of physical harm, bodily injury, or assault, on other persons.

- I. The making of false allegations not made in good faith, by one parent against the other, of harm to a child as defined in section 50-25.1-02.
  - m. Any other factors considered by the court to be relevant to a particular child custody dispute.
2. In any proceeding under this chapter, the court, at any stage of the proceedings after final judgment, may make orders about what security is to be given for the care, custody, and support of the unmarried minor children of the marriage as from the circumstances of the parties and the nature of the case is equitable.

### 14-09-06.3. Custody investigations and reports - Costs.

1. In contested custody proceedings the court may, upon the request of either party, or, upon its own motion, order an investigation and report concerning custodial arrangements for the child. The court shall designate a person or agency responsible for making the investigation and report, which designees may include the county social service board, public health officer, school officials, and any other public agency or private practitioner it deems qualified to make the investigation.
2. The investigator may consult any person who may have information about the child and any potential custody arrangements, and upon order of the court may refer the child to any professional personnel for diagnosis.
3. The court shall mail the investigator's report to counsel and to any party not represented by counsel at least thirty days before the hearing. The investigator shall make available to any such counsel or party the complete file of data and reports underlying the investigator's report and the names and addresses of all persons whom the investigator has consulted. A party may call the investigator and any person whom the investigator has consulted for cross-examination at the hearing. A party may not waive the party's right of cross-examination before the hearing.
4. The court shall enter an order for the costs of any such investigation against either or both parties, except that if the parties are indigent the expenses must be borne by the county.

**14-09-06.4. Appointment of guardian ad litem or child custody investigator for children in custody, support, and visitation proceedings - Immunity.** In any action for an annulment, divorce, legal separation, or other action affecting marriage, when either party has reason for special concern as to the future of the minor children, and in any action when the custody or visitation of children is contested, either party to the action may petition the court for the appointment of a guardian ad litem to represent the children concerning custody, support, and visitation. The court, in its discretion, may appoint a guardian ad litem or child custody investigator on its own motion. If appointed, a guardian ad litem shall serve as an advocate of the children's best interests. If appointed, the child custody investigator shall provide those services as prescribed by the supreme court. The court may direct either or both parties to pay the guardian ad litem or child custody investigator fee established by the court. If neither party is able to pay the fee, the court may direct the fee to be paid, in whole or in part, by the county of venue. The court may direct either or both parties to reimburse the county, in whole or in part, for such payment. Any guardian ad litem or child custody investigator appointed under this section who acts in good faith in making a report to the court is immune from any civil liability resulting from the report. For the purpose of determining good faith, the good faith of the guardian ad litem or child custody investigator is a disputable presumption.

**14-09-06.5. Allegation of harm to child - Effect.** If the court finds that an allegation of harm to a child by one parent against the other is false and not made in good faith, the court shall order the parent making the false allegation to pay court costs and reasonable attorney's fees incurred by the other parent in responding to the allegation.

**14-09-06.6. Limitations on postjudgment custody modifications.**

1. Unless agreed to in writing by the parties, no motion to modify a custody order may be made earlier than two years after the date of entry of an order establishing custody, except in accordance with subsection 3.
2. Unless agreed to in writing by the parties, if a motion for modification has been disposed of upon its merits, no subsequent motion may be filed within two years of disposition of the prior motion, except in accordance with subsection 3.
3. The time limitation in subsections 1 and 2 does not apply if the court finds:
  - a. The persistent and willful denial or interference with visitation;
  - b. The child's present environment may endanger the child's physical or emotional health or impair the child's emotional development; or
  - c. The primary physical care of the child has changed to the other parent for longer than six months.
4. A party seeking modification of a custody order shall serve and file moving papers and supporting affidavits and shall give notice to the other party to the proceeding who may serve and file a response and opposing affidavits. The court shall consider the motion on briefs and without oral argument or evidentiary hearing and shall deny the motion unless the court finds the moving party has established a prima facie case justifying a modification. If a prima facie case is established, the court shall set a date for an evidentiary hearing.
5. The court may not modify a prior custody order within the two-year period following the date of entry of an order establishing custody unless the court finds the modification is necessary to serve the best interest of the child and:
  - a. The persistent and willful denial or interference with visitation;
  - b. The child's present environment may endanger the child's physical or emotional health or impair the child's emotional development; or
  - c. The primary physical care of the child has changed to the other parent for longer than six months.
6. The court may modify a prior custody order after the two-year period following the date of entry of an order establishing custody if the court finds:
  - a. On the basis of facts that have arisen since the prior order or which were unknown to the court at the time of the prior order, a material change has occurred in the circumstances of the child or the parties; and
  - b. The modification is necessary to serve the best interest of the child.
7. The court may modify a prior custody order at any time if the court finds a stipulated agreement by the parties to modify the custody is in the best interest of the child.
8. Upon a motion to modify custody under this section, the burden of proof is on the moving party.

**14-09-07. Residence of child.** A parent entitled to the custody of a child may not change the residence of the child to another state except upon order of the court or with the consent of the noncustodial parent, if the noncustodial parent has been given visitation rights by the decree. A court order is not required if the noncustodial parent:

1. Has not exercised visitation rights for a period of one year; or
2. Has moved to another state and is more than fifty miles [80.47 kilometers] from the residence of the custodial parent.

**14-09-08. Mutual duty to support children.** Parents shall give their children support and education suitable to the child's circumstances. The court may compel either or both of the parents to provide for the support of their children.

**14-09-08.1. Support payments - Payment to state disbursement unit - Transfer of proceedings for enforcement of decree - Procedures upon failure to pay.**

1. In any action in which a court orders that payments for child support be made, the court shall provide in its order that the payments be paid to the state disbursement unit for remittance to the obligee.
2. a. Each party subject to the order shall immediately inform the state disbursement unit of the party's:
  - (1) Social security number;
  - (2) Residential and mailing addresses and any change of address;
  - (3) Telephone number;
  - (4) Motor vehicle operator's license number;
  - (5) Employer's name, address, and telephone number; and
  - (6) Change of any other condition which may affect the proper administration of this chapter.
- b. The requirements of subdivision a must be incorporated into each order for payment of child support.
- c. In any subsequent child support enforcement action between the parties, upon sufficient showing that diligent effort has been made to ascertain the location of a party, the court shall deem due process requirements for notice and service to have been met, with respect to the noticed party, by delivery of written notice to the most recent residential or employer address provided by the noticed party pursuant to this subsection.
- d. The requirements of this subsection continue in effect until all child support obligations have been satisfied with respect to each child subject to the order.
3. Whenever there is failure to make the payments as required, the clerk of court may, and upon request of the obligee or child support agency, shall send notice of the arrears by first-class mail, with affidavit of service, to the person required to make the payments, or request a district judge of the judicial district to issue a citation for contempt of court against the person who has failed to make the payments. The citation may be served on that person by first-class mail with affidavit of service to the person's last-known address.

4. The court of its own motion or on motion of a child support agency or the state's attorney of the county of venue, the county of the recipient's residence, or the county of the obligor's residence may cause a certified copy of any support order in the action to be transcribed and filed with the clerk of the district court of any county in this state in which the obligee or the obligor may reside from time to time. Thereafter, this section applies as if the support order were issued by the district court of the county to which the support order is transcribed. No fee may be charged for transcribing or filing a certified copy of any support order under this section.

**14-09-08.2. Support for children after majority - Retroactive application.**

1. A judgment or order requiring the payment of child support until the child attains majority continues as to the child until the end of the month during which the child is graduated from high school or attains the age of nineteen years, whichever occurs first, if:
  - a. The child is enrolled and attending high school and is eighteen years of age prior to the date the child is expected to be graduated; and
  - b. The child resides with the person to whom the duty of support is owed.
2. A judgment or order may require payment of child support after majority under substantially the circumstances described in subsection 1.
3. The person to whom the duty of support is owed under either subsection 1 or 2 may file an affidavit with the district court stating that the requirements of subsection 1 are met, the school in which the child is enrolled, and the anticipated date of the child's graduation. Upon filing of the affidavit, the child support continues pursuant to subsection 1 or pursuant to the terms of a judgment or order described in subsection 2. A fee may not be charged for filing such an affidavit.
4. The clerk of court shall serve the affidavit by first-class mail upon the person owing the duty of support. If at any time thereafter the person owing the duty of support files a motion with the court, supported by that person's affidavit that the child is no longer enrolled in or attending high school, the court shall determine if the child is enrolled in and attending high school and shall enter an order accordingly.
5. This section applies to child support orders concerning children described in subsection 1 or 2, regardless of the date of entry of the order, provided that the affidavit described in subsection 3 is filed not later than ninety days after the child graduates from high school or reaches age nineteen, whichever occurs first.
6. This section does not preclude the entry of an order for child support which continues after the child reaches age eighteen, if the parties agree, or if the court determines the support to be appropriate.
7. For purposes of this section, a child is treated as being in school during summer vacation if the child was enrolled in and attending school and did not graduate from high school at the end of the school period immediately preceding the summer vacation.

**14-09-08.3. Duration of child support obligations.** Unless dates for the commencement or termination of a child support obligation are specified by the court's order, a judgment or order requiring the payment of child support is effective as to the child in the month in which the order is signed and continues until the end of the month in which the support obligation terminates.

**14-09-08.4. Periodic review of child support orders.**

1. Each child support order must be reviewed by the child support agency no less frequently than thirty-six months after the establishment of the order or the most recent amendment or review of the order by the court or child support agency unless:
  - a. In the case of an order with respect to which there is in effect an assignment under chapter 50-09, the child support agency has determined that a review is not in the best interests of the child and neither the obligor nor the obligee has requested review; or
  - b. In the case of any other order neither the obligor nor the obligee has requested review.
2. Each child support order, in which there is in effect an assignment under chapter 50-09 or with respect to which either the obligor or the obligee has requested review, must be reviewed by the child support agency if:
  - a. More than twelve months have passed since the establishment of the order or the most recent amendment or review of that order by the court or child support agency, whichever is later; and
  - b. The order provides for no child support and was based on a finding that the obligor has no ability to pay child support.
3. If, upon review, the child support agency determines that the order provides for child support payments in an amount that is inconsistent with the amount that would be required by the child support guidelines established under subsection 1 of section 14-09-09.7, the child support agency may seek an amendment of the order. If the order provides for child support payments in an amount less than eighty-five percent of the amount that would be required by those guidelines, the child support agency shall seek an amendment of the order.
4. If a child support order sought to be amended was entered at least one year before the filing of a motion or petition for amendment, the court shall order the amendment of the child support order to conform the amount of child support payment to that required under the child support guidelines, whether or not the motion or petition for amendment arises out of a periodic review of a child support order, and whether or not a material change of circumstances has taken place, unless the presumption that the correct amount of child support would result from the application of the child support guidelines is rebutted. If a motion or petition for amendment is filed within one year of the entry of the order sought to be amended, the party seeking amendment must also show a material change of circumstances.
5. A determination that a child who is the subject of a child support order is eligible for benefits furnished under subsection 17 or 19 of section 50-06-05.1, chapter 50-09, or chapter 50-24.1, or any substantially similar program operated by any state or tribal government, constitutes a material change of circumstances. The availability of health insurance at reasonable cost to a child who is the subject of a child support order constitutes a material change of circumstances. The need to provide for a child's health care needs, through health insurance or other means, constitutes a material change of circumstances.

**14-09-08.5. Notice of periodic review of child support orders.**

1. The child support agency shall provide written notice that a child support order being enforced by the child support agency may be subject to review under section 14-09-08.4. The notice may be sent by first-class mail to the obligor and the obligee, at the addresses they have most recently provided to the child support agency, at least thirty-five days before the commencement of the review.

2. The notice to the obligor must inform the obligor of the duty to furnish the information required by section 14-09-08.6 and that a failure to furnish the required information may result in the entry of an order compelling the furnishing of the information. The notice must also inform the obligor that the review determination will be mailed to the obligor following the review. The notice must be accompanied by an income report form, together with instructions for the accurate completion of the income report form.

**14-09-08.6. Obligor's duties upon review - Failure to provide information.**

1. The obligor shall provide information to the child support agency concerning the obligor's income, which is sufficient to accomplish the review, no later than five working days before the date of review. The information must be furnished by providing an income report, in the form and manner required by the public authority, accurately completed and attested to by the obligor, earnings statements secured from the obligor's current income payer if the obligor changed employment after the end of the latest income tax year for which the obligor filed a return, and providing:
  - a. A verified copy of the latest income tax return, filed with the internal revenue service or any state official administering a state income tax, which accurately reports the obligor's income for a fiscal year ending no more than seventeen months prior to the date of the review; or
  - b. A written authorization by which the child support agency may secure a verified copy of the latest income tax return, filed with the tax commissioner, which accurately reports the obligor's income for a fiscal year ending no more than seventeen months prior to the date of review.
2. If the obligor has not produced information under subsection 1 concerning the obligor's income, sufficient to accomplish the review, the child support agency may base its review determination on the assumption that the obligor's income has increased at the rate of ten percent per year since the child support order under review was entered or last modified.

**14-09-08.7. Notice of review determination.**

1. Following review, the child support agency shall promptly provide written notice of its determination on review. The notice may be sent by first-class mail to the obligor and the obligee, at the addresses they have most recently provided to the child support agency.
2. If the child support agency has made a determination that no amendment to the amount of child support should be sought, the notice must inform the obligor and the obligee of the right of each to challenge that determination by seeking an amendment to the amount of child support, from the court, at any time before the termination of the support order.
3. If the child support agency has made a determination to seek an amendment in the amount of child support, the notice must be mailed at least thirty-five days before the date of a hearing on a motion for amendment made by the child support agency under section 14-09-08.4, and must inform the obligor and the obligee of the right of each to challenge that determination by opposing that amendment before the court. The notice to the obligor must be accompanied by:
  - a. A proposed modification of the child support order to provide for payment of child support in the amount required under the child support guidelines;
  - b. A document by which the obligor may consent to the proposed modification; and



- c. An address and telephone number that the obligor may use to receive information from or schedule a meeting with representatives of the child support agency.

**14-09-08.8. Motion for amendment of child support order - How made - Presumption where obligor's income unknown.**

1. Upon a determination by a child support agency, made under section 14-09-08.4, that it may or must seek amendment of a child support order, the child support agency may file and serve a motion and supporting documents.
2. The court may determine the motion based upon the files, records, and evidence received in consideration of the motion. If the child support agency certifies that, despite diligent efforts to secure reliable information concerning the obligor's income, the obligor has not produced such information, and if the obligor provides the court with no reliable evidence concerning the obligor's income, it is presumed that the obligor's income has increased at the rate of ten percent per year since the child support order was entered or last modified.

**14-09-08.9. Request for review - Notice of right to request review.** An obligor or an obligee may request review under section 14-09-08.4, by applying to the child support agency for child support services, and indicating, in the manner there provided, a desire to have a child support order reviewed. Each judgment or order issued by a court in this state which includes an order for child support must include a statement advising of the right to request a review under this section. If a party to a child support matter is receiving services from the child support agency and an order for current child support has issued out of that matter, the child support agency shall provide notice of the right to request a review or further review of that child support order, to the obligor and obligee, not more than three years after the most recent child support order, review of that child support order, or notice of right to request a review of that child support order.

**14-09-08.10. Order.** Each order entered under this code for the support of a minor child or the support of a child after majority under section 14-09-08.2 must include a provision for health insurance coverage for that child.

1. Except as provided in subsection 2, the order must require the obligor to provide satisfactory health insurance coverage whenever that coverage is available at reasonable cost or becomes available at reasonable cost.
2. If the obligee is an individual with physical custody of the child, the obligee must be required to provide satisfactory health insurance whenever that coverage is available at no or nominal cost.

**14-09-08.11. Eligible child - Employer to permit enrollment - Employer duties and liabilities - Obligor contest.**

1. When an obligor is required to cover a child as a beneficiary under section 14-09-08.10, the child is eligible for health insurance coverage as a dependent of the obligor. If health insurance coverage required under section 14-09-08.10 is available through an employer, the employer must:
  - a. Permit the obligor to enroll under family coverage any child who is otherwise eligible for coverage without regard to any open enrollment restrictions;
  - b. If the obligor is enrolled but fails to make application to obtain coverage for the child, enroll the child under family coverage upon application by the obligee;
  - c. Upon receipt of the national medical support notice issued under section 14-09-08.20:

- (1) Comply with the provisions of the national medical support notice; and
    - (2) Transfer the national medical support notice to the insurer that provides any such health insurance coverage for which the child is eligible, within twenty business days after the date of the national medical support notice;
  - d. Not disenroll or eliminate coverage for any child unless the employer has eliminated family health coverage for all of its employees or the employer is provided satisfactory written evidence that:
    - (1) The order issued under section 14-09-08.10 is no longer in effect; or
    - (2) The child is or will be enrolled in comparable coverage that will take effect no later than the effective date of disenrollment;
  - e. Withhold from the obligor's compensation the obligor's share, if any, of premiums for health insurance coverage and pay this amount to the insurer;
  - f. If the amount required to be withheld under subdivision e, either alone or when added to the total of any withholding required by an order issued under section 14-09-09.15, exceeds fifty percent of the obligor's disposable income, withhold fifty percent of the obligor's disposable income;
  - g. In the case of an obligor contest under subsection 2, initiate and continue withholding until the employer receives notice that the contest is resolved; and
  - h. Promptly notify the public authority, in the same manner as required under subsection 9 of section 14-09-09.16, whenever the obligor's employment is terminated.
2. The obligor may contest the withholding provided for in subdivision e of subsection 1 by filing a request for a hearing within ten days of the date of the national medical support notice issued under section 14-09-08.20. If the obligor contests that withholding, the court shall:
    - a. Hold a hearing within ten working days after the date of the request; and
    - b. Confirm the withholding in the absence of a finding:
      - (1) Of a mistake of fact; or
      - (2) That the obligee is required to provide health insurance coverage pursuant to section 14-09-08.10.
  3. Withholding required by an order issued under section 14-09-09.15 must be satisfied before any payment is made to the insurer. If the amount remaining is insufficient to pay the obligor's share of premiums for health insurance coverage, the obligor may authorize additional withholding to pay the obligor's share. If the obligor does not authorize additional withholding, and the health insurance coverage will lapse as a result, the employer must promptly inform the public authority of the insufficiency.
  4. An employer receiving a national medical support notice under this section is subject to the same duties and liabilities as an income payer under section 14-09-09.3 unless the context indicates otherwise.
  5. For purposes of this section:

- a. "Employer" means an entity or individual who would be determined to be an employer under section 3401(d) of the Internal Revenue Code of 1986, as amended [26 U.S.C. 3401(d)], and includes any governmental entity and any labor organization; and
- b. "Insurer" has the meaning provided in section 26.1-36.5-01.

**14-09-08.12. Authorization to insurer.** The signature of the custodial parent of the insured dependent, the obligee, or the obligee's assignee is a valid authorization to the insurer for purposes of processing an insurance reimbursement payment to the provider of the medical services, for the release of information concerning the insured dependent or coverage available to the insured dependent, and otherwise for purposes of verifying coverage and payment for the insured dependent, in the same manner and to the same extent as the signature of the insured.

**14-09-08.13. Application for service.** The child support agency responsible for support enforcement shall take necessary steps to implement, modify, and enforce an order for dependent health insurance whenever the children receive benefits through temporary assistance for needy families or foster care under chapter 50-09 or medical assistance under chapter 50-24.1, or upon application of the obligee to the child support agency and payment by the obligee of any required application fee.

**14-09-08.14. Public authority to establish criteria.** The public authority shall establish criteria to identify cases involving children who received benefits through temporary assistance for needy families or foster care under chapter 50-09 or medical assistance under chapter 50-24.1, or when an application to the child support agency has been completed by an obligee and when there is a high potential for obtaining medical support based on:

1. Evidence that health insurance may be available to the obligor at reasonable cost; and
2. Facts that are sufficient to warrant modification of the existing court order to include health insurance coverage for a dependent child.

**14-09-08.15. Reasonable cost of health insurance.** For purposes of this chapter, health insurance is considered reasonable in cost if it is available to the obligor on a group basis or through an employer or union, regardless of service delivery mechanism, or as otherwise defined by the public authority in compliance with rules promulgated by the secretary of the United States department of health and human services.

**14-09-08.16. Requests for information from income payer.**

1. A child support agency or the public authority may mail a request for information to the income payer in any matter in which it secures reliable information that the income payer may be indebted to an obligor. The request must identify the obligor by name, and, if known, address and social security number.
2. Within ten days after receipt of a request for information issued under subsection 1, an income payer shall provide the requester with a written statement informing the requester whether or not the income payer is, or within the one hundred eighty days immediately preceding receipt of the request has been, an income payer with respect to that obligor. If the income payer is, or within the previous one hundred eighty days has been, an income payer with respect to that obligor, the income payer shall furnish information to the requester, including:
  - a. The amount of any income currently paid to the obligor, calculated on a monthly basis;
  - b. The total amount of income paid to the obligor in the twelve months preceding the month in which the request is received;

- c. Information regarding any health insurance that may be made available to the obligor's children through the income payer;
  - d. The social security number under which payment of any income by the income payer to the obligor is reported;
  - e. The obligor's address; and
  - f. If the income payer is no longer an income payer with respect to that obligor, the date of last payment and any forwarding address.
3. Any income payer failing to comply with any requirements of this section may be punished for contempt of court. The court shall first afford such income payer a reasonable opportunity to purge itself of contempt.
  4. A proceeding against an income payer under this section may be commenced upon motion by a child support agency or the public authority and must be commenced within ninety days after the income payer's act or failure to act upon which such proceeding is based.

**14-09-08.17. Delinquent obligor may not renounce claims.** An obligor whose child support obligation is delinquent may not renounce, waive, or disclaim any interest that obligor might otherwise claim in a decedent's estate, a trust, or a similar device, to the extent necessary to satisfy the delinquency. Any attempt to renounce, waive, or disclaim such an interest is void if attempted after notice of the delinquency is furnished to the person administering the estate, trust, or similar device, and is otherwise voidable.

**14-09-08.18. Health insurance reimbursements received by but not owed to obligor to be paid over - Finding of contempt - Treatment as delinquent child support.**

1. A payment for services rendered by a medical provider to an obligor's dependent which is directed to the obligor in the form of reimbursements from health insurance must be paid to the medical provider, custodial parent, or public authority when the reimbursement is not owed to the obligor.
2. Any child support order that requires an obligor to provide health insurance is deemed to include the requirements of this section. An obligor retaining insurance reimbursement not owed to the obligor may be found in contempt of a child support order that requires the obligor to provide health insurance.
3. Any insurance reimbursement received by the obligor, but not owed to the obligor, may be treated as delinquent child support thirty days after receipt by the obligor if not sooner paid to the medical provider, custodial parent, or public authority, as their interests may appear, and is subject to all remedies available under this code for the collection of delinquent child support.

**14-09-08.19. Child support order - Required interest statement.** Each judgment or order requiring the payment of child support must include a statement that the child support obligation will accrue interest if not timely paid. Accrual of interest and validity of the order are not affected by a failure to include the statement required by this section.

**14-09-08.20. National medical support notice - Public authority duties.**

1. When an obligor is required to provide health insurance coverage for a child as a beneficiary under section 14-09-08.10, the order is being enforced under title IV-D, and the obligor's employer has been identified, the public authority shall use the national medical support notice, when appropriate, to enforce the provision of health insurance coverage for the child. The public authority shall:

- a. Serve the national medical support notice on the employer by first-class mail or in any other manner agreed to by the employer:
    - (1) Within two business days after the date of entry in the state directory of new hires of an employee who is an obligor of an order being enforced under title IV-D if the employer was identified based upon that entry; or otherwise
    - (2) Within a reasonable time;
  - b. Serve notice of the national medical support notice on the obligor by first-class mail at the obligor's last-known address;
  - c. If the insurer notified the public authority of more than one available health insurance coverage option, select:
    - (1) The option chosen by the state medicaid agency if an assignment under chapter 50-24.1 is in effect for the child;
    - (2) The option timely chosen by the obligee if paragraph 1 does not apply;
    - (3) The option that provides basic coverage, that is reasonably accessible to the child, and for which the obligor's share of the premium is lowest if paragraphs 1 and 2 do not apply; or
    - (4) The option that is reasonably accessible to the child and for which the obligor's share of the premium is lowest if paragraphs 1, 2, and 3 do not apply; and
  - d. Promptly notify the employer when a current order for medical support for which the public authority is responsible is no longer in effect.
- 2. If the public authority does not select an option under subdivision c of subsection 1 within twenty business days, the insurer shall enroll the child, and the obligor if necessary, in the insurer's default plan, if any.
  - 3. The public authority, the state medicaid agency, and any official, employee, or agent of either agency are immune from any liability arising out of the selection of, or failure to select, an option under subdivision c of subsection 1.
  - 4. For purposes of this section:
    - a. "Basic coverage" means:
      - (1) Health insurance that includes coverage for the following medically necessary services: preventive care, emergency care, inpatient and outpatient hospital care, physician services whether provided within or outside a hospital setting, diagnostic laboratory, and diagnostic and therapeutic radiological services; or
      - (2) A basic group health benefit plan approved under section 26.1-36.3-08;
    - b. "Employer" means an entity or individual who would be determined to be an employer under section 3401(d) of the Internal Revenue Code of 1986, as amended [26 U.S.C. 3401(d)], and includes any governmental entity and any labor organization;
    - c. "Insurer" has the meaning provided in section 26.1-36.5-01;

- d. "National medical support notice" means the notice promulgated pursuant to section 401(b) of the Child Support Performance and Incentive Act of 1998 [Pub. L. 105-200; 112 Stat. 645] and regulations adopted thereunder; and
- e. "Title IV-D" has the meaning provided in section 50-09-01.

**14-09-08.21. Termination of parental rights - Duty of support.** A termination of parental rights does not terminate the duty of either parent to support the child before the child's adoption unless that duty is specially terminated by order of the court after notice of a proposed termination or relinquishment is given to the department of human services in the manner appropriate for the service of process in a civil action in this state. A termination of a child support obligation under this section does not relieve a parent of the duty to pay any unpaid child support.

**14-09-09. Liability of stepparent for support.** A stepparent is not bound to maintain the spouse's dependent children, as defined in section 50-09-01, unless the child is received into the stepparent's family. If the stepparent receives them into the family, the stepparent is liable, to the extent of the stepparent's ability, to support them during the marriage and so long thereafter as they remain in the stepparent's family. Such liability may be enforced against the stepparent by any person furnishing necessities to such children. If the children are received into the stepparent's family and supported by the stepparent, it is presumed that the stepparent does so as a parent, in which case the children are not liable to the stepparent for their support, nor the stepparent to them for their services. The legal obligation of a natural or adoptive parent to support that person's children is not affected by the liability imposed upon their stepparent by this section.

**14-09-09.1. Child support - Wage assignment - Procedures.** Repealed by S.L. 1987, ch. 183, § 16.

**14-09-09.2. Child support - Alternative procedure to withhold and transmit earnings.** Repealed by S.L. 1987, ch. 183, § 16.

**14-09-09.3. Child support - Duties and liabilities of income payer under income withholding order.**

1. Any income payer failing to comply with this section or section 14-09-09.16 may be punished for contempt of court. The court shall first afford such income payer a reasonable opportunity to purge itself of such contempt.
2. Any income payer who fails or refuses to deliver income pursuant to an income withholding order, when such income payer has had in its possession such income, is personally liable for the amount of such income which the income payer failed or refused to deliver, together with costs, interest, and reasonable attorney's fees. If an income payer fails or refuses to deliver income for more than fourteen business days after the date an obligor is paid, the court shall award damages in an amount equal to two hundred dollars or actual damages caused by the violation, whichever is greater, in addition to costs, interest, late fees, and reasonable attorney's fees. Any damages awarded under this subsection must be reduced by the amount of any late fees for the same payment which have been collected by the public authority under subsection 9 of section 14-09-09.3. Any damages collected by the public authority under this subsection must be paid to the state disbursement unit for distribution under section 14-09-25 and any remaining balance must be paid to the obligor. If an income payer has failed to deliver income for more than one obligor, any damages collected under this section must be divided equally among all affected obligors. Each remedy authorized in this subsection is a remedial sanction as defined in section 27-10-01.1.
3. Any employer who refuses to employ, dismisses, demotes, disciplines, or in any way penalizes an obligor on account of any proceeding to collect child support, on

account of any order or orders entered by the court in such proceeding, on account of the employer's compliance with such order or orders, or on account of an income withholding order, is liable to the obligor for all damages, together with costs, interest thereon, and reasonable attorney's fees resulting from the employer's action. The employer may be required to make full restitution to the aggrieved obligor, including reinstatements and backpay.

4. An income payer may be enjoined by a court of competent jurisdiction from continuing any action in violation of section 14-09-09.16.
5. Any contempt proceeding against an income payer under this section must be commenced within one year after the income payer's act or failure to act upon which such proceeding is based.
6. Compliance by an income payer with an income withholding order operates as a discharge of the income payer's liability to the obligor as to that portion of the obligor's income so affected.
7. In considering an income withholding order issued by a court or administrative tribunal in a state other than the state of the obligor's principal place of employment, the income payer shall apply the law of the state of the obligor's principal place of employment in determining any withholding terms and conditions not specified in the income withholding order or in section 14-12.2-33.1.
8. An employer who complies with an income withholding order that is regular on its face is not subject to civil liability to any individual or agency for conduct in compliance with the order.
9. An income payer who fails to deliver income for more than seven business days after the date one or more obligors are paid may be charged a late fee equal to twenty-five dollars per obligor for each additional business day the payment is delinquent or seventy-five dollars for each additional business day the payment is delinquent, whichever is greater. A late fee charged under this subsection is payable fifteen days after service on the employer, by first-class mail, of notice of the imposition of the late fee. Failure to pay a late fee under this subsection may be punished as a contempt of court. Any late fee collected by the public authority under this subsection must be paid to the state disbursement unit for distribution under section 14-09-25 and any remaining balance must be paid to the obligor. If an income payer has failed to deliver income for more than one obligor, any late fees collected under this section must be divided equally among all affected obligors.

**14-09-09.4. Child support - Order for wage assignment or to withhold and transmit earnings - Dissolution, revocation or modification.** Repealed by S.L. 1987, ch. 183, § 16.

**14-09-09.5. Child support - Judgment or order as lien on property - Duration - Effect.** Repealed by S.L. 1981, ch. 172, § 1.

**14-09-09.6. Voluntary income withholding for support - Limitations.** An obligor may execute a document voluntarily authorizing income withholding from current or future income due the obligor from an income payer in an amount sufficient to meet any child support obligation imposed by a court or otherwise. An income withholding authorization made under this section is binding on the income payer one week after service upon the income payer by first-class mail, or in any other manner agreed to by the income payer, of a true copy of the executed income withholding authorization. The income payer shall deduct the sum or sums specified and pay them as specified by the income withholding authorization and any applicable imposition of a support obligation by a court. In addition, the income payer may deduct a fee of three dollars per month from the obligor's income to cover expenses involved in transmitting payment. Compliance by an income payer with an income withholding authorization issued under this section discharges the income payer's liability to the obligor for that portion of the obligor's

income. The income payer may not use the income withholding authorization as a basis for any disciplinary action against the obligor.

**14-09-09.7. Child support guidelines.**

1. The department of human services shall establish child support guidelines to assist courts in determining the amount a parent should be expected to contribute toward the support of the child under this section. The guidelines must:
  - a. Include consideration of gross income. For purposes of the guidelines, gross income does not include an employee benefit over which the employee does not have significant influence or control over the nature or amount unless:
    - (1) That benefit may be liquidated; and
    - (2) Liquidation of that benefit does not result in the employee incurring an income tax penalty.
  - b. Authorize an expense deduction for determining net income.
  - c. Designate other available resources to be considered.
  - d. Specify the circumstances that should be considered in reducing support contributions on the basis of hardship.
  - e. Include consideration of extended periods of time a minor child spends with the child's obligor parent.
  - f. Authorize a rebuttal of the presumption provided in subsection 3 in cases of atypical overtime wages or nonrecurring bonuses over which the obligor does not have significant influence or control.
2. The department shall accept and compile pertinent and reliable information from any available source in order to establish the child support guidelines. Copies of the guidelines must be made available to courts, state's attorneys, and upon request, to any other state or county officer or agency engaged in the administration or enforcement of this chapter.
3. There is a rebuttable presumption that the amount of child support that would result from the application of the child support guidelines is the correct amount of child support. The presumption may be rebutted if a preponderance of the evidence in a contested matter establishes, applying criteria established by the public authority which take into consideration the best interests of the child, that the child support amount established under the guidelines is not the correct amount of child support. A written finding or a specific finding on the record must be made if the court determines that the presumption has been rebutted. The finding must:
  - a. State the child support amount determined through application of the guidelines;
  - b. Identify the criteria that rebut the presumption of correctness of that amount; and
  - c. State the child support amount determined after application of the criteria that rebut the presumption.
4. The department shall institute a new rulemaking proceeding under section 28-32-02 relating to the child support guidelines to ensure that the application of the guidelines results in the determination of appropriate child support award amounts. The initial



rulemaking proceeding must be commenced with a notice of proposed adoption, amendment, or repeal by August 1, 1998, and subsequent rulemaking proceedings must be so commenced at least once every four years thereafter. Before commencing any rulemaking proceeding under this section, the department shall convene a drafting advisory committee that includes two members of the legislative assembly appointed by the chairman of the legislative council.

**14-09-09.8. Out-of-state wage withholding orders - Filing requirements.** Repealed by S.L. 1987, ch. 183, § 16.

**14-09-09.9. Effect of filing out-of-state wage withholding order.** Repealed by S.L. 1987, ch. 183, § 16.

**14-09-09.10. Definitions.** For the purposes of this chapter, unless the context or subject matter otherwise requires:

1. "Arrears registry" means the registry maintained under section 50-09-02.7.
2. "Business day" means every day that is not a Saturday or legal holiday.
3. "Child support" means payments for the support of children and combined payments for the support of children and spouses or former spouses, however denominated, if the payment is required by the order of a court or other governmental agency having authority to issue such orders.
4. "Child support agency" means the county social service board, any combination of county social service boards, or any entity created by a county social service board or any combination of county social service boards, in execution of the county social service board's duties under subsection 5 of section 50-09-03.
5. "Delinquent" means a situation which occurs on the first working day after the day upon which a child support payment was identified as due and unpaid, and the total amount of unpaid child support is at least equal to the amount of child support payable in one month.
6. "Disposable income" means gross income less deductions required by law for taxes and social security.
7. "Employer" means income payer.
8. "Health insurance" includes fees for service, health maintenance organization, preferred provider organization, comprehensive health association plan, accident and health insurance policies, group health plans as defined in section 607(1) of the Employee Retirement Income Security Act of 1974 [Pub. L. 99-272; 100 Stat. 281; 29 U.S.C. 1167(1)], and other types of coverage under which major medical coverage may be provided in a policy, plan, or contract which may legally be sold or provided in this state.
9. "Income" means any form of payment, regardless of source, owed to an obligor, including any earned, unearned, taxable or nontaxable income, workforce safety and insurance benefits, disability benefits, unemployment compensation benefits, annuity and retirement benefits, but excluding public assistance benefits administered under state law.
10. "Income payer" means any person, partnership, firm, corporation, limited liability company, association, political subdivision, or department or agency of the state or federal government owing income to an obligor and includes an obligor if the obligor is self-employed.

11. "Monthly support obligation" means an amount of child support ordered by a court or administrative tribunal in a proceeding to establish or modify a child support obligation, including amounts that are deferred for payment at a later date. The term is defined without regard to any amount of child support that an obligor is required to pay to avoid being held in contempt of court. If an amount of past-due support has been ordered as a lump sum rather than determined on a monthly basis, "monthly support obligation" means one hundred sixty-eight dollars.
12. "Obligee" means a person, including a state or political subdivision, to whom a duty of support is owed.
13. "Obligor" means any person owing a duty of support.
14. "Past-due support" means child support that is not paid by the earlier of:
  - a. The date a court order or an order of an administrative process established under state law requires payment to be made; or
  - b. The last day of the month or other period the payment was intended to cover.
15. "Payday" means the day upon which the income payer pays or otherwise credits the obligor.
16. "Public authority" means the department of human services in execution of its duties pursuant to the state plan submitted under chapter 50-09 in conformance with title IV-D of the Social Security Act [Pub. L. 93-647; 88 Stat. 2351; 42 U.S.C. 651 et seq.].
17. "System implementation date" means the date the public authority certifies to the secretary of state and the legislative council that the statewide automated data processing system, established under section 50-09-02.1, is operating.

**14-09-09.11. Income withholding order.** When a judgment or order requires the payment of child support, it may be enforced by an income withholding order, as provided in this chapter, in addition to any other remedies provided by law.

**14-09-09.12. Provision of notice of impact of income withholding law to obligors.** Each judgment or order issued by a court in this state which includes an order for support of minor children, but which does not require immediate income withholding, must include a statement that a delinquency in payment of the support due or the approved request of the obligee will result in an income withholding order being issued in accordance with this chapter.

**14-09-09.13. Procedure - Notice to obligor.** If immediate income withholding under section 14-09-09.24 has not been implemented and an obligor is delinquent, if an obligee's request for income withholding is approved, or if a court changes its finding that there is good cause not to require immediate income withholding, the public authority shall serve the notice required under this section upon the obligor whenever issuing an income withholding order. The notice must state:

1. That the obligor is delinquent in the payment of child support, that a request for withholding has been made by the obligee and approved by a child support agency, or that there is no longer good cause not to require immediate income withholding, as the case may be, and the obligor is therefore subject to an income withholding order on all income.
2. The amount of child support owed and the amount of arrearage, if any.
3. The total amount of money that will be withheld by the income payer from the obligor's income in each month as determined under section 14-09-09.30.

4. That the income payer may withhold an additional sum of three dollars to cover the income payer's expenses.
5. That the income withholding order has been issued without further order of the court.
6. That the obligor may contest the issuance of the income withholding order by filing a written request for hearing within ten days of the date of the notice made under this section.
7. That if the obligor contests the income withholding order pursuant to section 14-09-09.14, a hearing will be held and the court will determine and issue an order consistent with the requirements of section 14-09-09.14.
8. That the income withholding order applies to any current or subsequent income payer or period of employment.

**14-09-09.14. Hearing upon obligor's request.**

1. If the obligor files a request for a hearing within ten days of the date of the notice made pursuant to section 14-09-09.13, the court shall hold a hearing within ten working days after the date of the request.
  - a. The court may order that the income withholding order be withdrawn if at the hearing the obligor establishes:
    - (1) In a case where withholding would be based on an alleged delinquency, that there has been a mistake in the identity of the obligor; or
    - (2) In a case where an approved request for withholding has been made by the obligee, that the approval of the request constituted an abuse of discretion.
  - b. If at the hearing the obligor establishes that there is an overstatement in the amount of support stated to be owed by the obligor, the court may amend the amount to be withheld.
  - c. In the absence of a finding of a mistake of fact in a case where withholding would be based on an alleged delinquency, or in the absence of an abuse of discretion in the approval of an obligee's request for withholding, the court shall confirm the income withholding order. Payment of past-due support after issuance of notice under section 14-09-09.13 may not be the basis for an order that the income withholding order be withdrawn.
2. An obligor is not precluded, by subsection 1, from seeking appropriate relief from a judgment or order affecting a child support obligation nor is the court precluded from granting such relief. An obligor's request for such relief, whether made by motion under rule 60(b) of the North Dakota Rules of Civil Procedure or otherwise, may not be considered during the hearing described in subsection 1.

**14-09-09.15. Form - Effect of income withholding order.** The income withholding order must be issued in the name of the state of North Dakota in the standard format for notice of the order prescribed by the secretary of the United States department of health and human services under authority of 42 U.S.C. 666(b)(6)(A)(ii), contain only the information necessary for the income payer to comply with the income withholding order, and be directed to all current and subsequent income payers of the obligor. The income withholding order is binding on the income payer until further notice by the public authority and applies to all current and subsequent periods in which income is owed the obligor by the income payer. The income withholding order has priority over any other legal process against the same income.

**14-09-09.16. Service of income withholding order on income payer.**

1. The public authority shall serve the income withholding order on the income payer by first-class mail or in any other manner agreed to by the income payer, and upon the obligor by first-class mail to the obligor's last-known address.
2. If the obligor is subject to immediate income withholding under section 14-09-09.24, an income withholding order must be served on any known income payer within two business days of the date of receipt of information necessary to carry out income withholding. Subject to the provisions of section 14-09-09.17, if service of an income withholding order has been or may have been properly made under this section, an income withholding order must be served on any subsequently identified income payer within two business days of the date of receipt of information necessary to carry out income withholding.
3. An income withholding order may also be issued and served at the request of the obligor.
4. The income payer shall withhold a stated amount, determined under section 14-09-09.30, from the obligor's income at the time the obligor is paid for transmittal to the public authority within seven business days of the date the obligor is paid, together with a report of the date upon which the amount was withheld from the obligor's income.
5. The income payer may also withhold and retain an additional sum of three dollars per month from the obligor's income to cover expenses involved in transmitting payment.
6. The amount to be withheld, including amounts to cover expenses involved in transmitting payment, may not exceed fifty percent of the obligor's disposable income from this income payer, but a payment of an amount less than the ordered amount must be accompanied by a written calculation disclosing any of the obligor's income and disposable income which is payable by the income payer.
7. The income payer shall begin withholding no later than the first payday that occurs after service of the income withholding order.
8. If the income payer is served with more than one income withholding order issued under this chapter on a single obligor and the combined total amount to be paid under the income withholding orders exceeds fifty percent of the obligor's disposable income, the income payer shall withhold the maximum amount permitted and transmit to the public authority that portion thereof which the obligee's claim bears to the combined total of all claims.
9. The income payer shall notify the public authority in writing of the termination of a duty to pay income to the obligor within seven business days of the termination. The notification must include the name and address of the obligor's subsequent income payer, if known.
10. If the income payer is subject to income withholding orders for more than one obligor, the income payer may combine in a single payment the amounts for all obligors who have been ordered to pay the public authority with identification of the amount attributed to each obligor.

**14-09-09.17. Amendment - Termination of income withholding order.** Upon amendment or termination of an income withholding order, the public authority shall send appropriate notice to the income payer. An income withholding order is to be amended by the public authority when the total amount of money to be withheld is changed by elimination of arrearages or by court-ordered change in amount of child support. An income withholding order

is to be terminated when the duty to support ceases and all child support arrearages have been paid. When two or more income payers have been subjected to income withholding orders with respect to a child support obligation, the public authority shall suspend the income withholding order directed to one or more income payers, provided that the amount of child support withheld by the remaining income payer or payers equals the amount determined under section 14-09-09.30. The public authority shall immediately reinstate any suspended income withholding order should any child support obligation of the obligor thereafter become delinquent. The public authority shall provide a copy of the reinstated income withholding order, by first-class mail, to the obligor and the income payer.

**14-09-09.18. Interstate income withholding - Initiation by this state to other state.**

On application of a resident of this state, an obligee or an obligor of a support order issued by this state, or an agency to which an obligee has assigned support rights, the public authority shall request the child support enforcement agency of another state in which the obligor of a support order derives income to enter the order for the purpose of obtaining income withholding against such income. The public authority shall make that request within twenty days of the later of the date income withholding is determined appropriate or the date of receipt of any information necessary to carry out withholding. The public authority shall compile and transmit to the child support agency of the other state all documentation required to enter an order for this purpose. The public authority shall also transmit to the child support agency certified copies of any subsequent modifications of the support order. If the public authority receives notice that the obligor is contesting the income withholding in another state, it shall immediately notify the individual obligee of the date, time, and place of the hearings and of the obligee's right to attend.

**14-09-09.19. Interstate income withholding - Duties of the public authority upon receipt of request from another state.** Repealed by S.L. 1995, ch. 157, § 4.

**14-09-09.20. Interstate income withholding - Notice to obligor.** Repealed by S.L. 1995, ch. 157, § 4.

**14-09-09.21. Interstate income withholding - Hearing upon request of obligor.** Repealed by S.L. 1995, ch. 157, § 4.

**14-09-09.22. Interstate income withholding - Form - Service on income payor - Termination of order.** Repealed by S.L. 1995, ch. 157, § 4.

**14-09-09.23. Administration of income withholding.** Repealed by S.L. 1997, ch. 404, § 77.

**14-09-09.24. Immediate income withholding.**

1. Except as provided in subsection 2 or 3, each judgment or order which requires the payment of child support, issued or modified on or after January 1, 1990, subjects the income of the obligor to income withholding, regardless of whether the obligor's support payments are delinquent.
2. If a party to a proceeding, who would otherwise be subject to immediate income withholding under subsection 1, demonstrates, and the court finds that there is good cause not to require immediate withholding, or if the parties, including any assignee of support rights, reach a written agreement that provides for an alternative arrangement for assuring the regular payment of child support, the court need not subject the income of the obligor to immediate withholding.
3. If an obligor, who would otherwise be subject to immediate income withholding under subsection 1 in at least one case in which services are being provided by a child support agency under title IV-D, demonstrates, and a child support agency finds there is good cause not to require immediate income withholding, the child support agency may enter into a written agreement with an obligor that provides for an alternate payment arrangement in lieu of immediate income withholding.

Notwithstanding section 14-09-09.13, any failure to comply with an agreement under this subsection subjects the income of the obligor to income withholding under this section. Any obligee aggrieved by a finding of a child support agency under this subsection may seek review of the finding under subsection 2 of section 50-09-14.

4. A finding that there is good cause not to require immediate income withholding under subsection 2 or 3 must be based on at least:
  - a. A written determination that, and an explanation of why, implementing immediate income withholding would not be in the best interests of the child;
  - b. Proof of timely payment of previously ordered support, if any; and
  - c. A requirement that the obligor keep the clerk and the public authority informed of any employment-related health insurance to which the obligor has access.
5. A written agreement for an alternative arrangement for assuring the regular payment of child support is effective only if the agreement at least, in addition to other conditions the parties agree to:
  - a. Provides that the obligor shall keep the clerk and the public authority informed of any employment-related health insurance to which the obligor has access;
  - b. Describes the provisions by which regular payment of child support is assured; and
  - c. Is reviewed and approved by the court and entered into the court's records.

**14-09-09.25. Requests by obligee for income withholding - Approval - Procedures and standards.**

1. An obligee may apply to a child support agency for approval of an income withholding request. The income of the obligor becomes subject to income withholding on the date an approved request is made.
2. The public authority shall establish procedures and standards for the approval of obligee requests for income withholding. The standards established must include consideration of:
  - a. An obligor's threat to discontinue child support payments; and
  - b. An obligor's having made child support payments sufficient to avoid a delinquency but insufficient to conform to the ordered amount.
3. Upon application of an obligee requesting income withholding, the child support agency shall promptly approve or disapprove the request. The child support agency may not approve the obligee's request in a case where the court has determined that there is good cause not to require immediate income withholding unless the court first changes its determination.

**14-09-09.26. State is real party in interest.** The state is a real party in interest for purposes of establishing paternity and securing repayment of benefits paid, future support, and costs in action brought to establish, modify, or enforce an order for support of a child in any of the following circumstances:

1. Whenever aid under chapter 50-09 or 50-24.1 is provided to a dependent child.
2. Whenever application is made and accepted under section 14-09-08.9 or 14-09-08.13.

3. Whenever duties are imposed on the state or its public officials under chapter 14-12.2.

**14-09-09.27. Attorney represents people's interest in the enforcement of child support obligations.** In any action brought to establish paternity, secure repayment of governmental benefits paid, secure current or future support of children, or establish, enforce, or modify a child support obligation, the public authority or a child support agency may employ or contract with a licensed attorney. An attorney so employed or contracted represents the interest of the people of the state of North Dakota in the enforcement of child support obligations. Nothing in this section may be construed to modify confidentiality required of the public authority or a child support agency. Representation by the employed or contracted attorney may not be construed to create an attorney-client relationship between the attorney and any party or witness to the action, other than the people of the state of North Dakota, regardless of the name in which the action is brought.

**14-09-09.28. Application to existing cases.** Sections 14-09-09.26, 14-09-09.27, 14-12.2-19, and 14-12.2-20 apply to actions filed prior to July 7, 1991.

**14-09-09.29. Coordination of income withholding activities.** The public authority shall assume responsibility for administration of income withholding and the receipt and disbursement of child support payments.

**14-09-09.30. Monthly amount due.**

1. If there is a current monthly support obligation, the total amount of child support due in each month is the sum of the obligor's current monthly support obligation; and
  - a. The amount the obligor is ordered to pay toward any outstanding arrearage; or
  - b. If no order to repay an arrearage exists, an amount for application to any arrearage equal to twenty percent of the obligor's current monthly support obligation; or
2. If there is no current monthly support obligation, the total amount of child support due in each month is:
  - a. An amount equal to the greater of:
    - (1) The amount the obligor is ordered to pay toward any outstanding arrearage; or
    - (2) The sum of the obligor's most recent monthly support obligation and twenty percent of the obligor's most recent monthly support obligation;
  - b. An amount the obligor is ordered to pay toward an arrearage during periods when the supported child resides with the obligor pursuant to a court order; or
  - c. An amount the obligor is ordered to pay toward an arrearage if that amount is included in an order issued when there is no current monthly support obligation.
3. The total amount of child support due in each month under this section may be increased at the request of the obligor to repay an arrearage or by agreement with the public authority.

**14-09-09.31. Child support exempt from process.** A child support obligation owed to an obligee who is a judgment debtor may not be subject to execution, garnishment, attachment, or other process except to satisfy that child support obligation.

**14-09-09.32. Agreements to waive child support.** An agreement purporting to relieve an obligor of any current or future duty of child support is void and may not be enforced. An agreement purporting to waive past-due child support is void and may not be enforced unless the child support obligee and any assignee of the obligee have consented to the agreement in writing and the agreement has been approved by a court of competent jurisdiction. A copy of the order of approval must be provided to the state disbursement unit. As used in this section, "child support" does not include spousal support.

**14-09-09.33. Judicial offset of child support.**

1. Notwithstanding section 14-09-09.31, a court may order that a specific amount of past-due child support owed by an obligor to an obligee be offset by an equal amount of past-due child support owed to the obligor by the obligee. An order for an offset is permitted under this subsection only if:
  - a. The proposed offset is limited to past-due child support and does not apply to child support owed in the current month or owed in any future month;
  - b. The proposed offset does not include any past-due child support that has been assigned;
  - c. Neither party whose past-due child support obligation will be reduced or eliminated by the proposed offset owes past-due child support to another obligee; and
  - d. The opportunity to offset past-due child support under this section has not been used by either party as an incentive to avoid paying child support in the month in which it is due.
2. The order must include a specific finding that the proposed offset serves the best interests of the children to whom the obligor and obligee owe a duty of support.
3. Past-due child support owed by an obligor to an obligee may not be offset by past-due child support owed to the obligor by the obligee except as permitted in this section.
4. An obligor's child support obligation for the current month or for a future month may not be offset by past-due child support or other debts owed to the obligor by an obligee unless the court orders the offset as a method of satisfying an overpayment of child support that results from the establishment or reduction of a child support obligation.
5. An offset of child support under this section is considered a payment of child support by both the obligor and the obligee. A copy of the order for an offset must be provided to the state disbursement unit.
6. As used in this section, "child support" does not include spousal support.

**14-09-09.34. Lump sum payments.**

1. An income payer who has been served with an income withholding order issued under section 14-09-09.15 for an obligor which includes an amount for past-due support shall notify the public authority before making any lump sum payment of one thousand dollars or more to the obligor. "Lump sum payment" includes pay in lieu of vacation or other leave, bonus, commission, and any other payment to an obligor but does not include periodic payments made on regular paydays as compensation for services and does not include reimbursement for expenses incurred by the obligor on behalf of the income payer.



2. An income payer who provides notice of a lump sum payment to the public authority under subsection 1 may not make more than one-half of the payment to the obligor for thirty days from the date of the notice to the public authority or until the income payer receives written authorization from the public authority to make the lump sum payment to the obligor, whichever occurs first.
3. Notwithstanding subsection 2, an income payer who provides notice of a lump sum payment to the public authority under subsection 1 may not make a lump sum payment to an obligor if the income payer has been notified that an execution, garnishment, attachment, or other process has been initiated regarding the lump sum payment to satisfy a child support obligation of the obligor.
4. An income payer who owes a lump sum payment under this section is subject to the duties and liabilities in section 14-09-09.3 unless the context indicates otherwise.
5. This section does not apply to any portion of a lump sum payment that must be paid to satisfy an income withholding order issued under section 14-09-09.15.

**14-09-09.35. Transfers of funds for payment of child support.** If a court determines that income withholding under this chapter is inapplicable, ineffective, or insufficient to ensure monthly payment of child support as determined under section 14-09-09.30, a court may, and upon request of a child support agency shall, order an obligor to identify or establish a deposit account that allows for periodic transfers of funds for payment of child support and to execute any necessary agreement for preauthorized transfers of funds from the account to the state disbursement unit for the payment of child support. An obligor who fails to comply with this section or make sufficient funds available to satisfy any preauthorized transfer, or who stops payment or revokes authorization for any preauthorized transfer, may be punished for contempt of court.

**14-09-10. Reciprocal duty of support - Support of poor.** It is the duty of the father, the mother, and every child of any person who is unable to support oneself, to maintain that person to the extent of the ability of each. This liability may be enforced by any person furnishing necessities to the person. The promise of an adult child to pay for necessities furnished to the child's parent is binding.

**14-09-11. Allowance to parent for support of child.** The district court may direct an allowance to be made to a parent of a child out of its property for its past or future support and education on such conditions as may be proper, whenever such direction is for its benefit.

**14-09-12. Support by county - Liability of parent's estate.** If a parent chargeable with the support of a child dies leaving it chargeable upon the county and leaving an estate sufficient for its support, the board of county commissioners of the county, in the name of the county, may claim provision for its support from the parent's estate by civil action, and for this purpose may have the same remedies as any creditor against that estate and against the heirs, devisees, and next of kin of the parent.

**14-09-13. Neglect of child - Parent liable to third person.** If a parent neglects to provide articles necessary for that parent's child who is under that parent's charge, according to that parent's circumstances, a third person in good faith may supply such necessities and recover the reasonable value thereof from the parent.

**14-09-14. When parent not liable for support of child.** Repealed by S.L. 1999, ch. 141, § 25.

**14-09-15. Support of children after majority.** When a child, after attaining majority, continues to serve and to be supported by the parent, neither party is entitled to compensation in the absence of an agreement therefor.

**14-09-16. Control of property of child.** The parent, as such, has no control over the property of the child.

**14-09-17. Child's earnings - Relinquished by parent.** The parent, whether solvent or insolvent, may relinquish to the child the right of controlling the child and receiving the child's earnings. Abandonment by the parent is presumptive evidence of such relinquishment.

**14-09-18. Wages of minors.** The wages of a minor employed in service may be paid to the minor until the parent or guardian entitled thereto gives the employer notice that the parent or guardian claims such wages.

**14-09-19. Parental abuse.** The abuse of parental authority is the subject of judicial cognizance in a civil action in the district court brought by the child, or by its relatives within the third degree, or by the county social service board of the county where the child resides, and when the abuse is established the child may be freed from the dominion of the parent and the duty of support and education may be enforced.

**14-09-20. When parent's authority ceases.** The authority of a parent ceases:

1. Upon the appointment by a court of a guardian of the person of a child;
2. Upon the marriage of a child; or
3. Upon its attaining majority.

**14-09-21. Parent and child not liable for acts of other.** Neither parent nor child is answerable as such for the act of the other.

**14-09-22. Abuse or neglect of child - Penalty.**

1. Except as provided in subsection 2, a parent, adult family or household member, guardian, or other custodian of any child, who willfully commits any of the following offenses is guilty of a class C felony except if the victim of an offense under subdivision a is under the age of six years in which case the offense is a class B felony:
  - a. Inflicts, or allows to be inflicted, upon the child, bodily injury, substantial bodily injury, or serious bodily injury as defined by section 12.1-01-04 or mental injury.
  - b. Fails to provide proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health, or morals.
  - c. Permits the child to be, or fails to exercise reasonable diligence in preventing the child from being, in a disreputable place or associating with vagrants or vicious or immoral persons.
  - d. Permits the child to engage in, or fails to exercise reasonable diligence in preventing the child from engaging in, an occupation forbidden by the laws of this state or an occupation injurious to the child's health or morals or the health or morals of others.
2. A person who provides care, supervision, education, or guidance for a child unaccompanied by the child's parent, adult family or household member, guardian, or custodian in exchange for money, goods, or other services and who while providing such services commits an offense under subdivision a of subsection 1 is guilty of a class B felony. Any such person who commits, allows to be committed, or conspires to commit, against the child, a sex offense as defined in chapter 12.1-20 is subject to the penalties provided in that chapter.

**14-09-23. Full faith and credit for paternity determinations.** In any proceeding in which paternity or nonpaternity of a child is alleged, full faith and credit must be given to a determination of paternity by another state, made before a determination of paternity under the laws of this state, whether established through voluntary acknowledgment or through administrative or judicial process.

**14-09-24. Interference with visitation - Attorney's fees - Enforcement remedies and tools.** In any proceeding in which child visitation is properly in dispute between the parents of a child, the court shall award the noncustodial parent reasonable attorney's fees and costs if the court determines there has been willful and persistent denial of visitation rights by the custodial parent with respect to the child. The court may use any remedy that is available to enforce a child support order and which is appropriate to enforce visitation.

**14-09-25. State disbursement unit - Duties - Continuing appropriation.**

1. The public authority shall establish a state disbursement unit for the collection and disbursement of payments of child support. The state disbursement unit is responsible for the collection and disbursement of all payments under child support orders.
2. The public authority may contract with any public or private entity for any service provided by the state disbursement unit. The state disbursement unit may employ technology and agents to allow receipt of child support payments at locations and times when state disbursement unit staff are not available.
3. The state disbursement unit shall use automated procedures, electronic processes, and computer-driven technology, including the statewide automated data processing system established under section 50-09-02.1, to the maximum extent feasible, efficient, and economical, for the collection and distribution of child support payments.
4. The state disbursement unit shall account for and disburse all support payments received by it, maintain necessary records, and develop procedures for providing information to the parties, including the obligor and obligee, regarding actions taken and, at least annually, regarding child support payments collected and distributed. The state disbursement unit shall adopt procedures for the maintenance and retention of records of child support payments and for the storage and destruction of records when the support obligation is satisfied or is terminated.
5. The state disbursement unit shall deposit all child support payments received in the state treasury. All payments so deposited, except those payments assigned to the state, are appropriated to the public authority as a standing and continuing appropriation for the purpose of making disbursements to obligees entitled to the child support payments collected.
6. Notwithstanding section 28-20-36, the state disbursement unit shall disburse collected child support payments in conformity with title IV-D of the Social Security Act [Pub. L. 93-647; 88 Stat. 2351; 42 U.S.C. 651 et seq.]. Any disbursement made in error is not a gift and must be repaid. The public authority may take any action not inconsistent with law to secure repayment of any disbursement made in error. Interest accrued on an unpaid child support obligation is child support. To the extent consistent with the requirements of title IV-D, a payment received with respect to a child support arrearage must first be applied to accrued interest on the earliest arrearage, and then to the principal of that arrearage. The public authority may calculate judgment interest accrued on child support obligations that first became arrearages after July 1, 2002. The public authority shall enter in its records judgment interest on child support obligations that first became arrearages on or before July 1, 2002, for periods before January 1, 2004, only if a court has ordered the interest amount calculated by some individual or entity other than the public

authority and approved the calculated amount. For child support obligations that first became arrearages on or before July 1, 2002, the public authority may calculate judgment interest accrued only for periods on or after January 1, 2004. For purposes of this subsection, arrearage means an unpaid child support obligation that was due in a month prior to the current month.

7. Unless notice has otherwise been provided, the state disbursement unit shall provide notice to the obligor, the obligee, and any income payer that payment must be made to the state disbursement unit.
8. The public authority may suspend or waive judgment interest on an arrearage as part of an amnesty program, as an incentive for satisfying a child support obligation or complying with a payment plan, or if the public authority determines that the judgment interest is not collectible through commercially reasonable efforts. This subsection applies to judgment interest accruing before July 1, 2005, only if the arrearage is assigned to the public authority under section 50-09-06.1 or 50-24.1-02.1 or if the obligee provides written consent. Any judgment interest that is suspended or waived under this subsection may be reinstated by a court at any time or by the public authority if the obligor has failed to comply with a payment plan.
9. If an obligee is deceased, any past-due child support that is received must be disbursed in the following order:
  - a. As specifically provided in a court order in the event of the obligee's death;
  - b. To the obligee's estate or as provided in the obligee's will;
  - c. To the child or children on whose behalf the payments were made if the child or children are all eighteen years of age or older; or
  - d. As directed by the court if one or more of the children to whom the child support is owed is under eighteen years old.

**14-09-26. Modification of existing child support orders.**

1. A child support order issued under any provision of this code and in effect on October 1, 1998, is deemed to require payment to the state disbursement unit after September 30, 1998.
2. A child support order issued under any provision of this code after September 30, 1998, must require payment to the state disbursement unit.
3. A payment of child support received by a clerk of court after September 30, 1998, is deemed to be a payment to the state disbursement unit. A clerk of court receiving such child support payment after September 30, 1998, shall promptly remit or transfer that payment to the state disbursement unit.

**14-09-27. State disbursement unit fund - Continuing appropriation - Correction of errors.** Repealed by S.L. 1999, ch. 141, § 26.

**14-09-28. Parental custody and visitation rights and duties.**

1. Each parent of a child has the following custody and visitation rights and duties:
  - a. Right to access and obtain copies of the child's educational, medical, dental, religious, insurance, and other records or information.
  - b. Right to attend educational conferences concerning the child. This right does not require any school to hold a separate conference with each parent.

- c. Right to reasonable access to the child by written, telephonic, and electronic means.
  - d. Duty to inform the other parent as soon as reasonably possible of a serious accident or serious illness for which the child receives health care treatment. The parent shall provide to the other parent a description of the serious accident or serious illness, the time of the serious accident or serious illness, and the name and location of the treating health care provider.
  - e. Duty to immediately inform the other parent of a change in residential telephone number and address.
  - f. Duty to keep the other parent informed of the name and address of the school the child attends.
2. The court shall include in an order establishing or modifying visitation the rights and duties listed in this section; however, the court may restrict or exclude any right or duty listed in this section if the order states the reason in support of the restriction or exclusion. The court shall consider any domestic violence protection orders relating to the parties when determining whether to restrict or exclude any right or duty listed in this section.